

REMARKS

Claims 1-37 were pending in the Application as of the Office Action of May 20, 2009. Claims 7, 23-25, 28, and 33-36 are amended with this Response. Claims 19-21, 32, and 37 are cancelled, and claim 38 is added. Applicant respectfully thanks the Examiner for withdrawing the previously issued Restriction Requirement and indicating the Allowable Subject Matter of claims 5, 9, 11-15, and 17. The Examiner's objections and rejections will now be respectfully addressed in turn.

Objections to the Claims

Claims 33 and 35 are objected to for informalities. In Response, Applicant respectfully amends claims 33 and 35.

Rejections under 35 U.S.C. §112, second paragraph

Claims 19-21, 23-25, 32, 34, 36, and 37 are rejected under 35 U.S.C. §112, second paragraph as being allegedly indefinite for the following reasons.

Claims 19-21 are rejected for alleged informalities which have been rendered moot via a cancellation of claims 19-21.

Claims 23-25 are rejected as being in allegedly improper method format. In Response, Applicant respectfully amends claims 23-25.

Claim 32 is rejected for alleged informalities which have been rendered moot via a cancellation of claim 32.

Claim 34 is rejected as being in allegedly improper method format. In Response, Applicant respectfully amends claim 34.

Claim 36 is rejected as being in allegedly improper apparatus format. In Response, Applicant respectfully amends claim 36.

Claim 32 is rejected for alleged informalities which have been rendered moot via a cancellation of claim 32.

Rejections under 35 U.S.C. §101

Claim 32, 34, and 36 are rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter in that they merely provide for a use of a device or product. In Response, Applicant respectfully cancels claim 32 and amends claims 34 and 36.

Rejections under 35 U.S.C. §102(b)

Claims 1-3, 6-8, 10, 16, 18-23, 26-32, and 37 have been rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,284,590 to DeBoer (“DeBoer” hereinafter). Applicant respectfully traverses this rejection.

Applicant notes that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant’s independent claims 1 and 22 respectively recite *inter alia*,
“device for formation of small particles...outlet means for the particles,” (claim 1)
and
“withdrawing a jet of said particles from the mixing area.” (claim 22)

De Boer does not disclose a device or a method for formation of small particles. On the contrary, De Boer relates to a device for atomizing a liquid into a liquid mist. This mist render De Boer to be in a principally different technical area than that which is disclosed by Applicant.

A mist is constituted by small liquid droplets that are in liquid state. A liquid droplet is not a particle. De Boer thus fails to disclose a device for "formation of small particles," which is the important feature of claims 1 and 22.

Rejections under 35 U.S.C. §103(a)

Claims 4, 24, 25, and 33-36 have been rejected under 35 U.S.C. §103(a) as being obvious over DeBoer. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Claims 4, 24, 25, and 33-36 depend from claims 1 and 22. As such, for at least the reasons set forth in the 102 remarks, Applicant respectfully asserts that DeBoer does not teach every element of Applicant's claims 4, 24, 25, and 33-36. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 4, 24, 25, and 33-36 with respect to DeBoer. Since DeBoer fails to teach or suggest all of the limitations of claims 4, 24, 25, and 33-36, and since De Boer relates to a different technical area than Applicant's disclosure, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Conclusion

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,

By: /Daniel R. Gibson/
Daniel R. Gibson
Registration No. 56,539
CANTOR COLBURN LLP
20 Church Street
22nd Floor
Hartford, CT 06103
Telephone: 860-286-2929
Facsimile: 860-286-0115
Customer No. 23413

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